

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER DEJUAN JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

April 5, 2011

No. 295978

Wayne Circuit Court

LC No. 09-017911-FH

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), unlawful imprisonment, MCL 750.349b, two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b(1). Defendant was sentenced to concurrent terms of 84 months to 20 years' imprisonment for home invasion, 50 months to 15 years for unlawful imprisonment, and one to four years for each of the felonious assaults. He was also sentenced to a consecutive two-year term for felony-firearm. Defendant appeals as of right. We affirm defendant's sentences, but remand with instructions that the trial court amend the judgment of sentence to reflect that the sentences for unlawful imprisonment and felony-firearm are to run concurrently, and to further indicate whether the sentences for felony firearm and home invasion are to be served consecutively or concurrently.

Defendant first challenges the scoring of Offense Variable (OV) 8 of the sentencing guidelines. Defendant raised this issue below; thus, we review to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported the particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). A scoring decision for which there is any evidence will generally be upheld. *People v Waclawski*, 286 Mich App 634, 680; 780 NW2d 321 (2009).

MCL 777.38 provides:

(1) Offense variable 8 is victim asportation or captivity. Score offense variable 8 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) A victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense... 15 points

(b) No victim was asported or held captive... 0 points

(2) All of the following apply to scoring offense variable 8:

(a) Count each person who was placed in danger of injury or loss of life as a victim.

(b) Score 0 points if the sentencing offense is kidnapping.

In this case, the sentencing offense scored in the sentencing information report was first-degree home invasion. During the home invasion, Blair Gilliam agreed at gunpoint to leave and to take defendant to a different location. Defendant argues that Gilliam was not being placed in greater danger and that the score for OV 8 should have been zero points. However, we find that even if there were no greater danger, Gilliam was “held captive beyond the time necessary to commit the” home invasion. The trial court properly scored OV 8 at 15 points.

Defendant next argues that the sentencing court erred in making the sentences for first-degree home invasion and unlawful imprisonment consecutive to the sentence for felony-firearm. These two offenses were not cited as predicate offenses for the felony-firearm charge in the amended information. In *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000), our Supreme Court held:

From the plain language of the felony-firearm statute, [MCL 750.227b,] it is evident that the Legislature intended that a felony-firearm sentence be consecutive only to the sentence for a specific underlying felony. Subsection 2 clearly states that the felony-firearm sentence “shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the *felony* or attempt to commit the *felony*.” It is evident that the emphasized language refers back to the predicate offense discussed in subsection 1, i.e., the offense during which the defendant possessed a firearm. No language in the statute permits consecutive sentencing with convictions other than the predicate offense. [463 Mich at 463-464 (footnote omitted).]

Thus, the felony-firearm statute is not a basis for imposing a consecutive sentence with respect to these two offenses.

A consecutive sentence may be imposed only if it is authorized by statute. *People v Lee*, 233 Mich App 403, 405; 592 NW2d 779 (1999). As conceded by plaintiff, no statute authorizes a consecutive sentence for the crime of unlawful imprisonment. However, MCL 750.110a(8) provides:

The court may order a term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

Felony-firearm qualifies as “any other criminal offense.” Thus, if the possession of the firearm during the commission of a felony arose out of “the same transaction” as the home invasion, a consecutive sentence with respect to home invasion was authorized. Here, defendant committed the subject home invasion while brandishing a firearm with at least the intent to commit a felonious assault. Thus, the felony-firearm offense arose from the same transaction as the home invasion, and the sentence for the home invasion could be made consecutive to the felony-firearm sentence. However, MCL 750.110a(8) provides the trial court with the *discretion* to impose consecutive sentences—it is not mandatory. There is no indication on the record before us that the trial court judge contemplated the above statute when imposing sentence or whether he intended to exercise his discretion and impose consecutive sentences consistent with the statute. Remand is thus necessary for the trial court to articulate its intent with respect to defendant’s sentences for home invasion and felony firearm, and for resentencing if necessary.

We affirm defendant’s sentences, but remand this case with instructions that the trial court correct the judgment of sentence to reflect that defendant’s sentences for his convictions of felony-firearm and unlawful imprisonment are to run concurrently, and to indicate whether, in its discretion, it intends for defendant’s sentences for felony firearm and home invasion to run consecutively. The trial court is further instructed to ensure that a copy of any corrected judgment of sentence is delivered to the Department of Corrections. See *People v Brown*, 220 Mich App 680, 685; 560 NW2d 80 (1996).

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Deborah A. Servitto